

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

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ROSE PACKARD SHYVERS,

Appellant.

vs.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES,
a national banking association,

Appellee.

APPELLEE'S BRIEF.

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No. 9153.

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APPELLEE'S BRIEF.

Additional Statement of Facts.

Appellee concedes the correctness of the statement of the pleadings and facts disclosing jurisdiction contained in appellant's opening brief, when read in connection with the narrative of evidence printed in said brief from pages 9 to 15 thereof.

**Concise Statement of the Case Showing Questions
Raised.**

Appellee concedes the correctness of the concise statement of the case showing questions raised in appellant's brief.

Argument.

Appellant asserted in her petition that she was bona fide personally engaged in producing products of the soil and dairy farming, also poultry or livestock. It is conceded that she is a resident of London, England, where she has resided continuously since about the year 1932, as a housewife, with her husband, whose occupation is that of a ship broker and builder. The ranch property involved has, in so far as its character permitted such use, been farmed by lease tenants and dairymen. The question is, can a landowner who neither resides on the land nor resides within the United States, be considered as being personally engaged in farming, as the act requires, and can the benefits of the act be availed of by one who is a non-resident, and who leases out her property and remains wholly away from it, not even supervising the leasing, that being done by agents and attorneys employed to represent her in the United States? Appellee respectfully submits that section 75 subdivision (r) of the Bankruptcy Act was never intended to embrace such class of persons.

In the case of *In re Moser*, 95 Fed. (2d) 944, decided by the Ninth Circuit Court of Appeals, the debtor was not a non-resident but visited the ranch two to three times a month and during harvesting season, lived there consistently, and while there personally engaged in farming work, such as harrowing, plowing, pruning and harvesting.

In the case of *First National Bank & Trust Co. Trustee v. Beach*, 301 U. S. 435, 57 S. Ct. 801, cited by appellant, the Supreme Court stated:

“In every case the totality of the facts is to be considered and appraised.”

In the case of *In re Olson*, 21 Fed. Supp. 504, the court said in part as follows:

“The first clause of subsection (4) of section 75 provides: ‘The term “farmer” includes not only an individual who is primarily bona fide personally engaged in producing products of the soil,’ then continues a description of other activities in which debtor in this case makes no pretense of being engaged. The debtor in this case resides permanently in the city of East Moline, Ill., and the evidence shows that substantially all of his time is devoted to activities other than producing products of the soil. So far as the East farm is concerned his status is that of a landlord without any qualifications. The case is not similar to *First National Bank & Trust Co. v. Beach*, 301 U. S. 435, 57 S. Ct. 801, 804, 81 L. Ed. 1206, where the debtor resided upon the farm and personally devoted his labor to producing products of the soil and rented a part to others. Mr. Justice Cardozo in that case said: ‘The picture, however, is distorted if Beach is looked upon as a landlord with rentals unrelated to his primary vocation. His rentals like his labor smacked of the soil, and make him not less, but more a farmer than he would have been without them.’ In the case at bar the debtor’s labor is primarily not devoted to the products of the soil. He does not live upon the land, but hundreds of miles away in another state. It is true that he causes the West farm to be operated by a hired man, but such operation is not in the usual course. The farm is not equipped in the ordinary manner with livestock. Crops are not rotated nor the products of the land diversified. Except for a period during the spring months and again in the fall no one devotes time to labor on the farm. The revenues the debtor receives

from the West farm, over and above the rentals to retain possession, are not devoted to keeping up the farm nor to prevent depreciation, nor to the payment of interest, taxes, or insurance. The operation of the West farm by the debtor under his lease with the receiver is decidedly a 'milking' process only.

I therefore conclude that the debtor is not an 'individual who is primarily bona fide personally engaged in producing products of the soil.'

The second question then arises: Is debtor one 'the principal part of whose income is derived from any one or more' of the operations described in subsection (r) of section 75? The words, 'foregoing operations' seem to be the crux of this matter. A careful reading of subsection (r) I think discloses that every operation enumerated to be engaged in by the individual is a personal operation. I therefore conclude that, by the same token which controls the conclusion under the first clause, the debtor is not one the principal part of whose income is derived from bona fide personal engagement in producing products of the soil."

In the case of *In re Davis*, 22 Fed. Supp. 12, the court says in part as follows:

"The debtor evidently bases her contention for jurisdiction of this Court upon the provisions of section 75, subdivision (r) of the Bankruptcy Act, as amended, 11 U. S. C. A., section 203(r). That subdivision is in the following language:

"For the purposes of this section, section 22 (b), and section 202, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally en-

gaged in dairy farming, the production of poultry or livestock, or the production of poultry or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.”

‘The pertinent part of the sentence above quoted is the following clause: “or the principal part of whose income is derived from any one or more of the foregoing operations”. Indeed, the words, “foregoing operations” seems to be the crux of the matter. What “foregoing operations” are referred to? A careful reading of the preceding language of the subdivision I think makes it clear that every operation enumerated to be engaged in by an individual is a personal operation. By the terms of that subdivision “farmer” includes not only an individual primarily bona fide personally engaged in producing products of the soil, but any individual who is primarily bona fide personally engaged in four other allied activities, and then concludes with the language, “or the principal part of whose income is derived from any one or more of the foregoing operations.” What were the foregoing operations? In each instance a personal operation. The subdivision then brings within its purview the personal representative of a deceased farmer. I conclude that if the debtor be a farmer within the meaning of this subdivision, the debtor must be engaged in farming personally and not merely own farm land which she or he leases to others who operate it. In view of this conclusion the last clause of the subdivision does not apply, and the debtor in this instance is not to be deemed a resident

of the county of Wright and State of Iowa. In these circumstances I find the petition of the debtor not properly filed and that this court has no jurisdiction in the premises, and it is Ordered and Adjudged that the debtor's petition be and the same is hereby dismissed at her costs and an exception reserved to the debtor.'

"The court now at this time readopts said language and opinion, and it is now found that debtor's petition should be dismissed for want of jurisdiction, and for the further reason that the undisputed testimony taken shows and upon the debtor's petition and schedules it appears that the debtor's petition was not rationally filed in good faith, and from the undisputed facts and circumstances there is no reasonable probability of debtor's financial rehabilitation under any proceeding to be had under section 75 of the Bankruptcy Act, as amended."

In the case of *Davis v. Shackelford*, Circuit Court of Appeals, Iowa, 91 Fed. (2d) 148, the court says in part as follows:

"From an examination of the files and record in the case, including a communication by letter from debtor's counsel, it appears without controversy that the debtor is a resident of the City of Peoria in the State of Illinois, that she is a housewife, the wife of a practicing physician in that city. That while she has title to a farm in Wright County, Iowa, she leases it to a tenant and does not personally engage in any farming operations. It does not appear that

the debtor has ever resided at any time within the Northern District of Iowa, nor within the State of Iowa, nor that she is or has been engaged in farming at any time or place within said District or State.”

* * *

“If it be true that appellant was not engaged in farming operations in the district within the meaning of the act, she is not entitled to its benefits, and the court is without jurisdiction to entertain the proceeding.” * * *

In the case of *In re Noble*, 19 Federal Supplement 504, the court says in part as follows:

“The petition was filed *pro se* in a very informal manner. It does not contain the required schedules and the motion of the banks to dismiss it would prevail for that reason alone.”

“This land is in a vicinity where people of wealth have recently purchased farms of this type and converted them into what the natives of the region term ‘estates’. Naturally the value to such a purchaser is not based upon farm productivity. The Nobles feel that if they can ‘hang on’ some ‘angel’ from New York may alight upon their premises and pay them handsomely therefor. On such a basis they value the farm at \$50,000. * * *

“It is my conception that Congress passed the Frazier-Lemke Act for the purpose of rehabilitating distressed farmers as such. The only work accomplished on this acreage is that which Mr. Noble performs in spite of his asthmatic condition and that which his son John accomplishes during his week ends home from a New York preparatory school. Their plight is one to stir sympathy, but does not

entitle them to the consideration of the legislation under whose protective wing they seek shelter. They do not hope to become rehabilitated in the occupation of farmers. Their hopes turn on the possibility of a lucky deal in the real estate market. * * * I find that the petitioners are not farmers within the meaning of the legislation.”

The case of *In re Wright's Estate*, 17 Fed. Supp. 908, and the case of *In re Shonkwiler*, 17 Fed. Supp. 697, cited by appellant, were both cases decided prior to the *Olson* case and *Davis* case, and the *Olson* case, *supra*, particularly points out the remarks of Mr. Justice Cardozo in the *First National Bank v. Beach* case. Under the law as established by the cases of *In re Moser, supra, First National Bank v. Beach, supra, In re Olson, supra, In re Davis, supra, Davis v. Shackleford, supra, In re Noble, supra*, appellee respectfully submits that the debtor is not an individual who is primarily bona fide personally engaged in producing products of the soil, and that she is not an individual the principal part of whose income is derived from bona fide personal engagement in producing products of the soil; that section 75, subdivision (r) of the Bankruptcy Act requires that every operation enumerated therein must be a personal operation on which such income is based, and that the decree of dismissal rendered herein should be affirmed.

Respectfully submitted,

THORPE & BRIDGES,

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Counsel for Appellee.